

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

ANN COELHO and ISOKE FEMI,

No. 13-10975

Debtor(s).

INSTITUTE OF IMAGINAL SERVICES,

Plaintiff(s),

v.

A.P. No. 13-1109

ANN COELHO and ISOKE FEMI,

Defendant(s).

Memorandum on Motion for Summary Judgment

Plaintiff Institute of Imaginal Studies (“Meridian University”) is a private educational institution licensed under California’s Private Post Secondary Education Act of 2009, and offers graduate degree programs in psychology. Chapter 13 debtor and defendant Isoke Femi attended Meridian University’s psychology PhD program from 1996 to 2002. Meridian funded Femi’s tuition loans each year pursuant to written promissory notes.

1 On May 13, 2013, Femi filed a petition for Chapter 13 relief. On August 26, 2013, Meridian  
2 commenced this adversary proceeding seeking a declaration that Femi's obligation under the notes is  
3 nondischargeable pursuant to §523(a)(8) of the Bankruptcy Code as an educational benefit. It now  
4 seeks summary judgment. The parties agree that there are no disputed material facts.

5 Section 523(a)(8) makes three types of educational benefits nondischargeable. Two of them,  
6 government/nonprofit loans and IRS-qualified educational loans, are not applicable to this case. The  
7 only issue here is whether Meridian's notes are excepted from discharge pursuant to §523(a)(8)(A)(ii),  
8 which makes nondischargeable "an obligation to repay funds received as an educational benefit,  
9 scholarship or stipend[.]"

10 The phrase *repay funds received* must be interpreted according to its plain meaning and  
11 requires the court to find that a debtor received actual funds in before declaring an educational benefit  
12 nondischargeable under §523(a)(8)(A)(ii). *In re Hawkins*, 317 B.R. 104, 112 (9<sup>th</sup> Cir. BAP 2004)[“We  
13 agree with the bankruptcy court's holding that the subsidy received by the Debtor does not qualify as  
14 an ‘educational benefit’ under §523(a)(8) because the plain language . . . requires that a debtor  
15 receive actual funds in order to obtain a nondischargeable educational benefit.”]. See also *In re*  
16 *Christoff*, 510 B.R. 876 (Bkrtcy.N.D.Cal.2014)(Montali, J.).

17 Meridian relies heavily on *McKay v. Ingleson*, 558 F.3d 888 (9<sup>th</sup> Cir. 2009), but the court  
18 agrees with Judge Montali that the 2005 amendments to the Code make that case inapplicable where  
19 the governing law is section is §523(a)(8)(A)(ii), which does not mention the word “loan.”

20 For the foregoing reasons, the court will deny Meridian's motion and, unless the parties request  
21 otherwise, will enter a judgment in favor of Femi declaring his debt to Meridian dischargeable.  
22 Counsel for Femi shall submit an appropriate form of judgment when it is desired.

23 Dated: August 4, 2014

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Alan Jaroslovsky  
Chief Bankruptcy Judge